the range of his assertions, his criticism, or his comments. is as wide as, and no wider than, that of every other subject. No privilege attached to his position."

As I have already found that defendants have not proved that plaintiff had made those allegations on which the defamatory words were founded there is no substance in this defence. As stated in para. 702 of *Gatley* "the defendant must prove that the facts on which the comment is founded are true." and in *London Artists Ltd.* v. *Littler*[3] Lord Denning at page 391 said: —

"...In order to be fair the commentator must get his basic facts right."

Evidence was given of certain promises made by plaintiff during the campaign for the Municipal Elections to establish that plaintiff was a very big liar. Plaintiff has denied that he has made those promises and even if he did I do not consider it "fair comment" to brand him as a very big liar merely because he failed to fulfil some of his election promises.

There is another defence raised by 1st defendant in para. 3(iii) which reads as follows: —

"The first defendants avers that the words complained of were words of heat or vulgar abuse and were intended to be understood as such."

This defence however has not been referred to in 1st defendant's submission apparently because it is not a defence in an action for libel though it is one in an action for slander (see para. 341 2(d) of *Gatley*).

I therefore find that both defendants had libelled plaintiff.

As to the damages it would appear that there need only be one judgment against both defendants for the total damages to be awarded (see para. 1370 of *Gatley*).

Plaintiff has asked for substantial damages while defendants have submitted that nominal damages would be sufficient in this case. The nearest case which would be of assistance to me in assessing the quantum of damages is that of *Syed Husin Ali* v. *Sharikat Penchetakan Utusan Melayu Berhad & Anor.*[4] where the plaintiff who was at the material time a lecturer at the University of Malaya and a member of Party Rakyat was awarded $6,500 damages for having been ascribed as dishonest, disloyal to the Government of Malaysia, a subversive element, an irresponsible politician, ungrateful person, a supporter of President Sukarno and an instigator of unrest in the country. Plaintiff in this case was at the material time a top man of Party Rakyat and elected President of the Melaka Municipality but the defamatory imputation that he was a very big liar and an irresponsible person just as "Abu Jahal" was is in my view less severe than those ascribed to plaintiff in the case referred to above.

It is established that 1st defendant was the UMNO Supervisor of Elections in 1964 which had just been held when the defamatory words were published and that 2nd defendants were strong supporters of UMNO with several prominent UMNO members on their Board of Directors. It could therefore be said that those defamatory words were published to discredit a political opponent and as in *Yap Bor Lim* v. *Chia Thye Poh & Anor.*[5] it could not be held that nominal damages would suffice. Though plaintiff had not won any State or Parliamentary elections which he had on several occasions contested he was then the elected President of the Melaka Municipality. Much has been said by plaintiff's counsel on the conduct of defendants for purpose of assessing the damages but it must be borne in mind that plaintiff had commenced this action only on February 28, 1968, after Tun Tan Siew Sin had withdrawn his case against him. In *Cassell & Co. Ltd.* v. *Broome & Anor.*[6] at page 824 Lord Hailsham, quoting Windeyer J. in *Uren* v. *John Fairfax & Sons Pty. Ltd.*[7] at page 150 said as follows: —

"It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was publicly defamed. For this reason, compensation by damages operates in two ways, — as a vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money."

Having regard to all the circumstances of this case I am of the view that damages in the sum of $10,000 would be fair and adequate to vindicate plaintiff to the public and console him for the wrong done. I accordingly give judgment for plaintiff in the sum of $10,000 and costs. Certificate for two counsel is to issue.

Judgment for the plaintiff.

Solicitors: *Mah-Kok & Taye; Allen & Gledhill; Ariffin & Ooi.*

PUBLIC PROSECUTOR v. GEORGE ABRAHAM

[A.Cr.J. (Syed Agil Barakbah J.) February 14, 1977]
[Alor Star — Kedah Criminal Trial No. 14 of 1976]

Internal Security — Starting pistol — Whether "fire-arm" — Internal Security Act 1690, s. 57(1).

The accused in this case was charged for having under his control one starting pistol without lawful authority in a security area, i.e. at an Army Store in Sungai Patani, an offence under section 57(1)(a) of the Internal Security Act and punishable under section 57(1) of the same Act.

Held: it was not the intention of Parliament to stretch the definition of "fire-arm" so wide as to embrace any component parts of an object resembling a firearm unless they were component parts of an ordinary firearm or if otherwise parts of an object which could be adapted without any difficulty by any ordinary intelligent person, into a barrelled weapon. Section 2 must be construed by the context and circumstances in which it was written so as to give it a plain and unambiguous meaning. To construct it otherwise would tend to turn law-abiding subjects into law-breakers, an undesirable situation which departs from the real intention of the legislature.

Cases referred to:-

(1) *Thurtell & Hunt* (1824) Notable British Trials, pages 144-145.
(2) *Sia Soon Suan* v. *Public Prosecutor* [1966] 1 M.L.J. 116.
(3) *Lim Eng Kooi* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 63.
(4) *Ismail bin Haji Ibrahim* v. *Public Prosecutor* [1949] M.L.J. 139 C.A.
(5) *R.* v. *Freeman* [1970] 2 All E.R. 413.
(6) *Cafferata* v. *Wilson* [1936] 3 All E.R. 149.

CRIMINAL APPEAL.

Abdul Khalid (Deputy Public Prosecutor) for the prosecution.

Karpal Singh for the defence.

Syed Agil Barakbah J.: The accused in this case is charged for having under his control one starting pistol without lawful authority in a security area, i.e. at an Army Store, 12 Coy, Angkut, Jalan Kolam Ayer, Sungei Patani, an offence under section 57(1)(a) of the Internal Security Act No. 82 and punishable under section 57(1) of the same Act.

The Deputy Public Prosecutor Encik Abdul Khalid appeared for the prosecution and Mr. Karpal Singh for the defence.

The provisions in the Essential (Security Cases) (Amendment) Regulations, 1975, (hereinafter called "the Regulations) apply with regard to the rules of evidence and procedure as modified and stated therein.

The facts adduced by the prosecution are that sometime in March 1976, the accused was employed as a storekeeper and attached to "D" Platoon, Transport Company, Sungei Patani. He was solely responsible for the stores and sports equipment kept in the said store and held a set of keys to the padlock used to the only door leading to the store room. As a civilian employee he was not entitled to carry or possess any firearm issued by the military authorities. The Accused was arrested on March 15, 1976, at about 3.00 p.m. in the said camp by Inspector Shafie (PW3) who having brought him to the police station, Sungei Patani, handed him to A.S.P. Haji Khalid on whose instruction the arrest was made. Thereafter he was taken immediately to Kangar and kept in custody for five days under the charge of Inspector Nadarajah. On March 20, 1976, he was taken back to Sungei Patani police station and at about 2.30 p.m. the same day he was interrogated by Inspector Zid. (PW4). As a result of the interrogation he gave certain information which finally led to the recovery of a starting pistol. The information as recorded by PW4 states:— "I have a pistol kept in the military store No. 12 Transport Coy, Jalan Kolam Ayer, Sungei Patani". Thereafter the accused led PW4 and three other police personnel to the army store at the place mentioned, took out a bunch of kevs (Exhibit P5) from his pocket, unlocked the padlock (Exhibit P4) on the door, entered the store and pointed out to PW4 one army boot placed on the third shelf on the left side as one enters the store, at the same time telling PW4 that the pistol was inside the boot. On taking the boot (Exhibit P6) PW4 recovered a pistol (Exhibit P2) which he took possession. After photographs had been taken (Exhibit P3 A to E) he returned to Sungei Patani police station with the accused and lodged a report. The next morning at about 3.25 a.m. he recorded a cautioned statement from the accused in the same police station. (Exhibit P8). On March 28, 1976, PW4 handed the pistol (Exhibit P2) to the Police Armament Officer, Chief Inspector Visvanathan (PW1) for examination. The prosecution also adduced evidence that the accused had no licence or permit to possess the pistol and that the place in which it was recovered was a security area as proclaimed by the Yang Dipertuan Agung under P.U.(A) 148 dated May 15, 1969.

In his defence, the accused testified regarding his arrest and of being taken to Kangar police station in the custody of Inspector Nadarajah. There he was interrogated, treated roughly and tortured by the Inspector and other Special Branch personnel. He was alleged to have taken part in subversive activities by supplying the communists with bullets and arms. He denied all these allegations. He said he was a territorial army corporal and as such was faithful to the Government. He admitted taking part in martial arts in Sungei Patani under the instruction of one Teo Boon Ker. One Ah Too mentioned in the cautioned statement (Exhibit P8) was one of the students who was then staying with the instructor. He explained that they were not his close friends and he had never been out nor talked much with them. He had given them lifts on one or two occasions in his car and had hired the car to them. He denied any knowledge that both Boon Ker and Ah Too were members of the underground organisation or of having supplied any ammunition to them. Subsequently when he was taken to Sungei Patani he denied making any statement giving any information leading to the discovery of the pistol to PW4. He maintained he was straightaway taken to the camp by Inspector Nadarajah and after meeting his senior officer, one Capt. Bernard Phillip, he was taken to the store room. There Inspector Nadarajah handed him the keys (Exhibit P5) telling him to open the door. On entering the store, PW4 pointed to him the boot on the shelf. He had never seen the boot before. Then PW4 took down the boot and brought out something like a pistol. That was the first time he saw the pistol. Subsequently that day he was interrogated by PW4, Inspector Nadarajah and two Special Branch officers who forced him to confess that the pistol was his. He maintained the statement (Exhibit P8) was made as a result of compulsion and threat by Inspector Nadarajah and coaching by PW4. There was no truth in the statement and he was forced to sign it.

As regards the keys to the store, the accused stated that the spare keys were kept by the platoon sergeant in the office. When he was away the spare keys would be used. He would use the keys in his possession when he was on duty whenever equipment was required from the store. Any army personnel had either to get his permission or that of the sergeant if anything is required from the store. He would then unlock the door and accompany the personnel concerned into the store for the issue of the equipment required. He was responsible for the store and answerable for any loss. According to him, no military boots were kept in the said store. He further stated that Inspector Nadarajah took possession of the keys (Exhibit P5) from him while he was being taken to Kangar and handed them to him only on the day of the visit to the store room just before he unlocked the door.

According to Regulation 17 of the Regulations, the trial court shall decide on the guilt or innocence of the accused only at the conclusion of the case for the defence after hearing and considering the evidence of both the prosecution and the defence as a whole, having regard to the justice of the case and without regard for the technicalities of the rules of evidence or procedure or for any defect concerning the charge.

There is, therefore, a change from the normal rules of evidence or procedure applicable in trials of ordinary cases under other statutory laws. The cautioned statement (Exhibit P8) is rendered admissible in evidence by virtue of Regulation 21(1) of the Regulations. Due weight and consideration of such evidence is required to be given under Regulation 21(7). It is pertinent to mention here that the defence counsel did not raise any objection as to the admissibility of the cautioned statement (Exhibit P8) although time was given to him to go through the statement. It was in the defence that the accused alleged that the statement was obtained by means of threat and inducement. Had objection been raised earlier during the prosecution case, I would have adopted the normal procedure of holding a trial within a trial and allowed the accused to give evidence on the matter. Anyway, I still consider the accused's defence touching the matter and conclude that the making of the statement did not appear to have been caused by any inducement, threat or promise, having reference to the charge against the accused proceeding from PW4 or any other police personnel. The statement, in my view, is both voluntary and true.

Next comes the information which led to the discovery of the pistol as recorded by PW4 (Exhibit P7). I hold the information to be admissible under section 27 of the Evidence Act as it relates distinctly to the discovery of the pistol. (Exhibit P2). There is no cogent reason for me to believe that it had been improperly obtained. The finding of the pistol as a result of the information is evidence and tends to prove the truth of the allegation. (*Thurtell & Hunt*[1] (1824) Notable British Trials, pages 144-145).

With regard to the accused's testimony relating to the spare keys to the store alleged to have been kept by the platoon sergeant, the evidence of Lieutenant Taharuddin (PW2) pointed otherwise. According to him, Exhibit P5 was the set of keys kept by the accused who was responsible for stores kept in the store room. The witness was never cross-examined as to the existence of spare keys. When the accused went on leave, another from Ipoh would take over and be handed the store keys.

One of the main grounds raised by the defence is that the prosecution has failed to prove by evidence beyond reasonable doubt that the pistol (Exhibit P2) was the one recovered on the ground that the chain of evidence was broken. According to the Armament Officer (PW1), the pistol was handed to him for examination by PW4 but did not say that he handed it back to him subsequently, while PW4 did not say that he handed the pistol to PW1 though that evidence ought to have been given. However, other evidence were adduced to my satisfaction that Exhibit P2 was the very pistol recovered by PW4 from the army store. Both PW1 and PW4 gave a similar description of the pistol pointing to its broken parts and its appearance. The court was considering only one exhibit and not numerous exhibits recovered. There was no question of any contradiction by any witness or any confusion as to the exhibit concerned as in the case of *Sia Soon Suan* v. *Public Prosecutor.*[2] If at all there was a break in the link in the chain of evidence, it has been repaired in the manner stated above. Nevertheless, I would stress the importance of proving this link in the chain as being incumbent on the prosecution.

Considering the evidence on the case as a whole, on the facts alone I have no hesitation to conclude that the accused was in control of the pistol at the material time and place as stated in the charge. No reasonable doubt has arisen in my mind to hold otherwise.

However, the crucial point in this case is a point of law which relates to whether the starting pistol, the subject-matter of the charge, falls within the definition of "fire-arm" under section 2 of the Act. For the sake of clarity I propose to classify the definition under four limbs as follows:—

"fire-arm" means:—

(i) any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged; or

(ii) which can be adapted for the discharge of any such shot, bullet or other missile; and

(iii) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; and

(iv) includes any component part of any such weapon as aforesaid.

The question whether an article comes within this definition is a question of fact to be decided in each individual case and in approaching the question the particular purpose for which the article is designed and manufactured has to be taken into consideration. No formula can be devised to cover all possible sets of circumstances. (See *Lim Eng Kooi* v. *Public Prosecutor*[3] and *Ismail bin Haji Ibrahim v. Public Prosecutor*[4]).

The evidence adduced by the Armament Officer (PW1) who examined the starting pistol may be summed up as follows:— It is manufactured in Japan and designed to fire blanks. It is generally used for starting races at athletic events. It is not a lethal weapon and cannot hurt anybody. Though it has an explosive charge it does not have a bullet because no shot, bullet or other missile can be discharged. It is not an airgun, air pistol, automatic gun or automatic pistol. At the time of examination it was not serviceable as a starting pistol. The cylinder would not accept or discharge a life bullet because all the five chambers are plugged with steel so that no life bullet can be inserted in the chamber and cannot be fired. It was already broken on examination on the front bottom part of the body and both sides of the butt. Repairs have to be done in order to make it serviceable as a starting pistol. With such repairs it can be adapted to fire a life bullet by changing the cylinder to one in which a life bullet can be inserted and fired and by fixing a firing pin to the hammer. This would require major repairs and replacements. Then only it can be used as a lethal weapon which may cause injury or death.

Considering Exhibit P2 as it is, I do not think it falls within the first and third limbs of the definition of "fire-arm". The words "or which" appearing in the second limb, as I read them, refer to any lethal barrelled weapon as mentioned in the first limb. It

leaves therefore the fourth limb to be considered as the expert evidence clearly indicates that Exhibit P2 is not a lethal weapon or, in the least, a weapon, unless adapted as such. However, having regard to relevant authorities, the question as to whether it can be adapted for the discharge of any shot, etc. appearing in the second limb, will have to be taken into consideration.

The relevant authority on the matter is *R.* v. *Freeman.*[5] The subject-matter of the charge in that case was a .38 starting pistol with a revolving chamber and of solid construction. The barrel was solid and there was an exhaust port on the top for the escape of gas. This can be removed by drilling after which it would be capable of firing bulleted ammunition with lethal force. Part of the barrel had been drilled at the muzzle end and up to where the drill and been broken through the top at the rear of the front side. Sachs L.J. was considering the definition of "fire-arm" as defined in section 57(1) of the Firearms Act, 1968, which is similar to the definition in section 2 of our Act. His Lordship followed the principles adopted by Lord Hewart in *Cafferata* v. *Wilson.*[6] That case dealt with a dummy revolver similar in appearance to an ordinary revolver and fitted with a barrel and cartridge chambers only partially bored with a vent hole in the barrel for the escape of gas. It was capable of being converted into a lethal weapon by drilling a hole. The principle which can be derived from that case, which I think is applicable to the present case, is that if something had had to be adapted by altering or adding to the pistol to make it into a complete weapon, it might be said to be part of the weapon. His Lordship also observed on page 416 that in other cases where the subject-matter of the charge is not one identical with that in *Cafferata's case,* it is a question of fact and degree whether it does or does not fall within the ambit of the Act. His Lordship continued —

"... it would indeed be unfortunate if an object, which by the use of an electrical drill of a type that can be bought at almost any general store in any High Street can be so easily adapted into a lethal weapon, should not come within section 1(1) of the 1968 Act."

His Lordship stated as a fact that it would take about five minutes to drill a hole with an electric driller and about half an hour with a hand driller. The two decisions widened the construction of the statutory provision in that it includes every instrument which can be easily adapted for use as a firearm. The principle was accepted by our Court of Appeal in *Lim Eng Kooi's* case. The crucial point hinges on the words "can be easily adapted".

On that point the facts in the instant case are different from those in the two cases cited above in that the component parts, viz. the cylinder and the firing pin, not to mention the major repairs, requiring the welding of the crack and change of the butt sides, cannot be easily adapted as found from the surrounding circumstances. The expert stated categorically that major replacements of the parts are necessary. I do not think that these parts are easily obtainable from any shop in Sungei Patani as these are strictly controlled under the Arms Act, 1960, section 10(2) of which requires any repair, and for that matter adaptation of any arms of ammunition, by the holder of a licence to repair. From the cautioned statement (Exhibit P8) the accused was handed the pistol for repair which ultimately he could not do. He was told to destroy it but kept it in the store thinking that it was a toy pistol after consulting two military armourers. For the purpose of altering in the manner stated, the aid of an expert or a person having technical knowledge of a firearm appears to be necessary. It is not the case of a simple drilling of a hole in the barrel.

There is a proposition by Lord Hewart in *Cafferata's* case with regard to the dummy pistol in that as it contained everything else necessary for a weapon, all the other parts of it except the barrel which was blocked, are parts of such weapon. In my opinion the dummy can be said to be a replica of a revolver of that type but a starting pistol seems to have its own features used solely for the purpose it is made, i.e. for starting sports events. According to the expert it does cause any harm to anybody as such, unless the two parts are adapted. It therefore follows that if the proposition is to be accepted it should be construed subject to the principle that it can be easily adapted. I would go further to add, as happened in *Freeman's* case where part of the barrel had been drilled, that an overt act towards adaptation has been done, should be a necessary ingredient.

Turning to section 2, I do not think it is the intention of Parliament to stretch the definition of "fire-arm" so wide as to embrace any component parts of an object resembling a firearm unless they are component parts of an ordinary firearm or if otherwise parts of an object which can be adapted without any difficulty by any ordinary intelligent person, into a barrelled weapon. The section must be construed by the context and circumstances in which it is written so as to give it a plain and unambiguous meaning. To construct it otherwise would, in my view, tend to turn law-abiding subjects into law-breakers, an undesirable situation which departs from the real intention of the legislature. It is common knowledge that starting pistols are being used for sports events throughout the country. One can imagine the situation where an official starter who is not the licensed owner thereof and has obtained one on loan for the occasion, can be placed in jeopardy of being charged with a similar offence for which the punishment is the death penalty, if such interpretation is given. In the light of the above, I do not consider the starting pistol (Exhibit P2) to be a "fire-arm" as defined in section 2 of the Act.

I have no alternative in the circumstances but to find the accused not guilty of the charge and acquit him on this ground.

Order accordingly.

Solicitors: *Karpal Singh & Co.*